

Standing Committee Report Summary

Inordinate Delay in Filling up the Vacancies in the Supreme Court and High Courts

- The Standing Committee on Personnel, Public Grievances, Law and Justice (Chairperson: Mr. Anand Sharma) presented its report on ‘Inordinate Delay in Filling up the Vacancies in the Supreme Court and High Courts’ on December 6, 2016.
- **Role of executive in appointments:** Judicial appointments is the joint responsibility of the Executive and the Judiciary, with neither body having primacy over the other. The Constitution provides for appointment by President after ‘consultation’ with judiciary, instead of ‘concurrence’. The present interpretation of the Constitution by the Supreme Court that requires the concurrence of the judiciary may be reversed.
- **Finalisation of Memorandum of Procedure (MoP):** The present lack of consensus between the Executive and Judiciary, in relation to finalisation of the MoP, has led to delays in filling up vacancies in the higher courts. The MoP must be finalised and the SC judgments must be reviewed at the earliest. The revised MoP must include three essential requirements: transparency, accountability and objectivity. It must also include the appointment procedure of High Court (HC) judges from the subordinate judiciary. In the meanwhile, the process of judicial appointments must continue as per the existing procedure so that the functioning of courts is not adversely affected.
- **Adherence to timelines in filling vacancies:** The timelines laid down in the Second Judges case and the MoP are not being adhered to, by the Judiciary and the Executive. This has resulted in extraordinary delays in filling up of vacancies. Further, while the current MoP has timelines for appointment of HC judges, it does not lay down a similar timeline for SC judges.
- Timelines for appointments to all higher courts should be specified in the MoP, and adhered to by all constitutional authorities. Further, when a judge retires, the appointment against that vacancy should be carried out simultaneously.
- **Transparency in appointments:** Greater transparency in the process of appointment of judges of higher courts must be ensured. Various aspects related to the appointments process, such as: (i) eligibility criteria; (ii) method and criteria of selection; (iii) manner of evaluation of merit; (iv) eligible candidates for consideration; (v) number of vacancies, should be made public. However, the final shortlist of names may be kept confidential till the process is completed.
- A candidate, whose name has been rejected by the collegium (comprising the Chief Justice and four senior most SC judges) or the government, must be informed of the reasons for the same. If reasons are not given, the principles of natural justice would be violated.
- **Shortlisting of names:** The views of all judges in the court and the Bar Association must be taken in shortlisting of candidates. All such names may be placed before the HC collegium, which will submit a final shortlist of names to the SC collegium and central government. A cell in the Registry of the courts could maintain a computerized database of persons eligible for appointment as judges.
- **National security and public interest:** The government proposes to decline the collegium’s recommendations for appointment on grounds of ‘national security’ and ‘larger public interest’. These terms have also been proposed as parameters for appointments in the revised MoP. If the government were to reject a candidate on these grounds, it would be similar to giving them a veto power, which is against the constitutional mandate. The terms ‘national security’ and ‘larger public interest’, and the circumstances that would fall within their purview should be specified.
- **Composition of constitutional benches:** The strength of SC judges has increased from 7 to 31, since 1950. Therefore, at least 11 judges should hear cases involving the validity of a constitutional amendment. Cases involving the interpretation of the Constitution should be heard by a bench of at least seven SC Judges.
- **Ad hoc judges to address pendency:** HC Chief Justices may appoint retired judicial officers as ad hoc judges, to deal with the increase in pending cases. Such appointments should be in addition to the sanctioned strength of the court.
- **Increase age of retirement:** The retirement age of SC judges may be increased to 67 years, and HC judges to 65 years. This is based on increased life expectancy, and in line with international practice.
- **Minimum tenure:** Most Chief Justices of higher courts have short tenures, for about a year or so. The Department of Justice may create a fixed minimum tenure for Chief Justices of higher courts.

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December 23, 2016

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